

76-1-403 Former prosecution barring subsequent prosecution for offense out of same episode.

- (1) If a defendant has been prosecuted for one or more offenses arising out of a single criminal episode, a subsequent prosecution for the same or a different offense arising out of the same criminal episode is barred if:
 - (a) the subsequent prosecution is for an offense that was or should have been tried under Subsection 76-1-402(2) in the former prosecution; and
 - (b) the former prosecution:
 - (i) resulted in acquittal;
 - (ii) resulted in conviction;
 - (iii) was improperly terminated; or
 - (iv) was terminated by a final order or judgment for the defendant that has not been reversed, set aside, or vacated and that necessarily required a determination inconsistent with a fact that must be established to secure conviction in the subsequent prosecution.
- (2) There is an acquittal if the prosecution resulted in a finding of not guilty by the trier of facts or in a determination that there was insufficient evidence to warrant conviction. A finding of guilty of a lesser included offense is an acquittal of the greater offense even though the conviction for the lesser included offense is subsequently reversed, set aside, or vacated.
- (3) There is a conviction if the prosecution resulted in a judgment of guilt that has not been reversed, set aside, or vacated; a verdict of guilty that has not been reversed, set aside, or vacated and that is capable of supporting a judgment; or a plea of guilty accepted by the court.
- (4) There is an improper termination of prosecution if the termination takes place before the verdict, is for reasons not amounting to an acquittal, and takes place after a jury has been impaneled and sworn to try the defendant, or, if the jury trial is waived, after the first witness is sworn. However, termination of prosecution is not improper if:
 - (a) the defendant consents to the termination;
 - (b) the defendant waives his right to object to the termination; or
 - (c) the court finds and states for the record that the termination is necessary because:
 - (i) it is physically impossible to proceed with the trial in conformity with the law;
 - (ii) there is a legal defect in the proceeding not attributable to the state that would make any judgment entered upon a verdict reversible as a matter of law;
 - (iii) prejudicial conduct in or out of the courtroom not attributable to the state makes it impossible to proceed with the trial without injustice to the defendant or the state;
 - (iv) the jury is unable to agree upon a verdict; or
 - (v) false statements of a juror on voir dire prevent a fair trial.

Amended by Chapter 278, 2013 General Session